

No. 76-665

Supreme Court, U. S.
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MICHAEL WODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

ALAN ERNEST, NEXT FRIEND OF UNBORN CHILD ROE, ETC.,
PETITIONER

v.

GERALD R. FORD, PRESIDENT OF THE UNITED STATES,
ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT*

**MEMORANDUM FOR THE RESPONDENTS
IN OPPOSITION**

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner Alan Ernest brought suit in the United States District Court for the District of Columbia on September 17, 1976, demanding, *inter alia*, that the court overrule *Roe v. Wade*, 410 U.S. 113. Pet. 2-3. On October 19, 1976, the district court dismissed the complaint with prejudice for lack of subject matter jurisdiction and for failure to state a claim for which relief can be granted. Pet. App. A-1. Petitioner filed a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit on October 28, 1976, and docketed the record in that court on November 11, 1976. The same day he filed this petition for a writ of certiorari to the court of appeals in advance of judgment, alleging jurisdiction under 28 U.S.C. 1254(1) and 28 U.S.C. 2101(e).

This case does not present the extraordinary circumstances justifying certiorari before judgment under Rule 20 of this Court's rules. See *United States v. Nixon*, 418 U.S. 683, 686-687; *Youngstown Co. v. Sawyer*, 343 U.S. 579; *United States v. Mine Workers*, 330 U.S. 258; *Carter v. Carter Coal Co.*, 298 U.S. 238. Moreover, petitioner's claims are without merit.

Petitioner, who captions himself in his petition as the "Next Friend of Unborn Child Roe And All Others Similarly Situated," lacks standing since he cannot demonstrate that he suffers any injury in fact. *Simon v. Eastern Kentucky Welfare Rights Organization*, Nos. 74-1124 and 74-1110, decided June 1, 1976. In addition, the named defendants, *i.e.*, the President, the Attorney General, and the United States Attorney for the District of Columbia, have no functions with respect to the relief petitioner seeks.¹ Finally, petitioner's claim (Pet. 3) that *Roe v. Wade* should be overruled because the decision was based on "false evidence" is insubstantial.

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JANUARY 1977.

¹Petitioner previously sued the Attorney General of the State of Virginia, asserting similar claims. See *Ernest v. Miller*, No. 75-174, certiorari denied, 423 U.S. 893.